

Board Administration and Regulatory Coordination Unit

Division 3. Air Resources Board

Chapter 1. Air Resources Board

Subchapter 1.25. Administrative Procedures--Hearings

Article 3. Administrative Hearing Procedures for Petitions for Review of Complaints

Subarticle 8. Decisions of the Hearing Officer

§ 60065.38. Default Order.

(a) Upon motion, the hearing officer may find a party to be in default upon failure, without good cause to file a timely response to the complaint as required under section 60065.18; to appear at a scheduled conference or hearing; or to comply with an order of the hearing officer.

(b) For purposes of a pending complaint action,

(1) A default by respondent shall constitute an admission of all facts alleged in the complaint and a waiver of respondent's right to a hearing of the factual allegations.

(2) A default by complainant shall constitute a waiver of complainant's right to proceed on the merits of the action, and shall result in the dismissal of the complaint with prejudice.

(c) No finding of default shall be made against the respondent unless the complainant presents sufficient evidence to establish a prima facie showing that the state board and the hearing officer had jurisdiction over the matters at issue and that the complaint was properly served.

(d) Within 10 days, the complainant shall present written evidence, supported by affidavits or declarations explaining the proposed penalty set forth in the complaint.

(e) Any proceeding may be reinstated by the hearing officer upon a showing of good cause that contains sufficient facts to show or establish a reasonable basis for the failure to appear at the hearing. The request for reinstatement shall be made by the defaulting party within 30 days of service of the default order.

NOTE: Authority cited: Sections 39600, 39601, 43028 and 43031(a), Health and Safety Code. Reference: Mathews v. Eldridge, 424 U.S. 319 (1976); and Sections 43028 and 43031(a), Health and Safety Code.

REFERENCE